

ASSEMBLY BILL

No. 1705

Introduced by Assembly Member Williams

February 13, 2014

An act to amend Sections 7201 and 10261 of the Public Contract Code, relating to public contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1705, as introduced, Williams. Public contracts: payment

Existing law authorizes the retention proceeds withheld from any payment by an awarding entity, as described, from the original contractor, by the original contractor from any subcontractor, and by a subcontractor from any subcontractor to exceed 5% on specific projects where the director of the department has made, or the governing body of the public entity or designated official of the public entity has approved, a finding prior to the bid that the project is substantially complex and requires a higher retention, as specified.

This bill would indicate the intent of the Legislature to define the term “substantially complex” for purposes of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 7201 of the Public Contract Code is
- 2 amended to read:
- 3 7201. (a) (1) This section shall apply with respect to all
- 4 contracts entered into on or after January 1, 2012, between a public
- 5 entity and an original contractor, between an original contractor

1 and a subcontractor, and between all subcontractors thereunder,
2 relating to the construction of any public work of improvement.

3 (2) Under no circumstances shall any provision of this section
4 be construed to limit the ability of any public entity to withhold
5 150 percent of the value of any disputed amount of work from the
6 final payment, as provided for in subdivision (c) of Section 7107.
7 In the event of a good faith dispute, nothing in this section shall
8 be construed to require a public entity to pay for work that is not
9 approved or accepted in accordance with the proper plans or
10 specifications.

11 (3) For purposes of this section, “public entity” means the state,
12 including every state agency, office, department, division, bureau,
13 board, or commission, the California State University, the
14 University of California, a city, county, city and county, including
15 charter cities and charter counties, district, special district, public
16 authority, political subdivision, public corporation, or nonprofit
17 transit corporation wholly owned by a public agency and formed
18 to carry out the purposes of the public agency.

19 (b) (1) The retention proceeds withheld from any payment by
20 a public entity from the original contractor, by the original
21 contractor from any subcontractor, and by a subcontractor from
22 any subcontractor thereunder shall not exceed 5 percent of the
23 payment. In no event shall the total retention proceeds withheld
24 exceed 5 percent of the contract price. In a contract between the
25 original contractor and a subcontractor, and in a contract between
26 a subcontractor and any subcontractor thereunder, the percentage
27 of the retention proceeds withheld shall not exceed the percentage
28 specified in the contract between the public entity and the original
29 contractor.

30 (2) This subdivision shall not apply if the contractor provides
31 written notice to the subcontractor, pursuant to subdivision (c) of
32 Section 4108, prior to, or at, the time that the bid is requested, that
33 bonds shall be required, and the subcontractor subsequently is
34 unable or refuses to furnish to the contractor a performance and
35 payment bond issued by an admitted surety insurer.

36 (3) Notwithstanding any other provision of this subdivision, the
37 retention proceeds withheld from any payment by an awarding
38 entity set forth in paragraphs (1) to (5), inclusive, of subdivision
39 (a) of Section 10106, from the original contractor, by the original
40 contractor from any subcontractor, and by a subcontractor from

1 any subcontractor thereunder, may exceed 5 percent on specific
2 projects where the director of the department has made a finding
3 prior to the bid that the project is substantially complex, *as defined*,
4 and therefore requires a higher retention amount than 5 percent
5 and the department includes both this finding and the actual
6 retention amount in the bid documents. In a contract between the
7 original contractor and a subcontractor, and in a contract between
8 a subcontractor and any subcontractor thereunder, the percentage
9 of the retention proceeds withheld shall not exceed the percentage
10 specified in the contract between the department and the original
11 contractor.

12 (4) Notwithstanding any other provision of this subdivision, the
13 retention proceeds withheld from any payment by the awarding
14 entity of a city, county, city and county, including charter cities
15 and charter counties, district, special district, public authority,
16 political subdivision, public corporation, or nonprofit transit
17 corporation wholly owned by a public agency and formed to carry
18 out the purposes of the public agency, from the original contractor,
19 by the original contractor from any subcontractor, and by a
20 subcontractor from any subcontractor thereunder, may exceed 5
21 percent on specific projects where the governing body of the public
22 entity or designee, including, but not limited to, a general manager
23 or other director of an appropriate department, has approved a
24 finding during a properly noticed and normally scheduled public
25 hearing and prior to bid that the project is substantially complex,
26 *as defined*, and therefore requires a higher retention amount than
27 5 percent and the awarding entity includes both this finding and
28 the actual retention amount in the bid documents. In a contract
29 between the original contractor and a subcontractor, and in a
30 contract between a subcontractor and any subcontractor thereunder,
31 the percentage of the retention proceeds withheld shall not exceed
32 the percentage specified in the contract between the department
33 and the original contractor.

34 (5) *As used in this subdivision, “substantially complex” means*
35 *_____.*

36 (c) A party identified in subdivision (a) shall not require any
37 other party to waive any provision of this section.

38 (d) This section shall remain in effect only until January 1, 2016,
39 and as of that date is repealed, unless a later enacted statute, that
40 is enacted before January 1, 2016, deletes or extends that date.

SEC. 2. Section 10261 of the Public Contract Code, as amended by Section 6 of Chapter 700 of the Statutes of 2011, is amended to read:

10261. (a) Payments upon contracts shall be made as the department prescribes upon estimates made and approved by the department, but progress payments shall not be made in excess of 100 percent of the percentage of actual work completed plus a like percentage of the value of material delivered on the ground or stored subject to or under the control of the state, and unused, except as otherwise provided in this section. The department shall withhold not more than 5 percent of the contract price until final completion and acceptance of the project. However, at any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the performance bond and by the surety on the payment bond. The Controller shall draw his or her warrants upon estimates so made and approved by the department and the Treasurer shall pay them. The funds may be released by electronic transfer if that procedure is requested by the contractor, in writing, and if the public entity has, in place at the time of the request, the mechanism for the transfer.

(b) (1) Notwithstanding this section, when the director of the department has made a finding prior to the bid that a specified project is substantially complex, *as defined*, and therefore requires a higher retention amount than 5 percent, and the department includes both this finding and the actual retention amount in the bid documents, then payments upon contracts by the department shall be made as the department prescribes upon estimates made and approved by the department. However, progress payments shall not be made in excess of 95 percent of the percentage of actual work completed, plus a like percentage of the value of material delivered on the ground or stored, subject to, or under the control of the state, and unused, except as otherwise provided in this section. At any time after 95 percent of the work has been completed, the department may reduce the funds withheld to an amount not less than 125 percent of the estimated value of the work yet to be completed, as determined by the department, if the reduction has been approved, in writing, by the surety on the

1 performance bond and by the surety on the payment bond. The
2 Controller shall draw his or her warrants upon estimates so made
3 and approved by the department and the Treasurer shall pay them
4 with funds appropriated therefor. The funds may be released by
5 electronic transfer if that procedure is requested by the contractor,
6 in writing, and if the public entity has, in place at the time of the
7 request, the mechanism for the transfer.

8 (2) *As used in this subdivision, “substantially complex” means*
9 _____.

10 (c) This section shall remain in effect only until January 1, 2016,
11 and as of that date is repealed, unless a later enacted statute, that
12 is enacted before January 1, 2016, deletes or extends that date.